



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

91724

**Matter of:** Tilley Constructors & Engineers, Inc.

**File:** B-251335.2

**Date:** April 2, 1993

Howell Roger Riggs, Jr., Esq., for the protester.  
Marilyn Walter Johnson, Esq., and Diane D. Hayden, Esq.,  
Department of the Navy, for the agency.  
Christine F. Bednarz, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

Agency properly considered an unsigned, downward bid modification that yielded the low bid under an invitation for bids, since the bidder included this document in the bid envelope as part of the bid with other signed documents, such as the standard form 1442 and bid bond, that clearly evidenced the bidder's intent to be bound by its modified bid price.

### DECISION

Tilley Constructors & Engineers, Inc. protests the proposed award of a contract to James Reeves Contractor, Inc. under invitation for bids (IFB) No. N62467-89-B-0025, issued by the Department of the Navy, Naval Facilities Engineering Command, for the construction of an academic development center at Keesler Air Force Base, Biloxi, Mississippi. Tilley claims that the agency improperly considered an unsigned, downward bid modification included in Reeves's bid envelope in determining that Reeves was the low bidder.

We deny the protest.

The Navy issued the IFB on September 25, 1992, and received 12 bids by the November 17, 1992, bid opening date. Reeves submitted a single bid envelope that included a Standard Form (SF) 1442, "Solicitation, Offer, and Award," reflecting a bid in the amount of \$3,030,550, an unsigned bid modification deducting \$38,000 from the bid price, an executed bid bond, and an executed Certificate of Procurement Integrity. All of the documents included in the bid package were dated

November 17 and, except for the bid modification, bore the signature of Graham Reeves, the firm's Secretary/Treasurer. The bid modification included in the bid was a form printed on Reeves's corporate letterhead that provided blanks for inserting any changes to "the enclosed base bid" and included a signature blank for Graham Reeves. The bid modification form contained the name and address of the responsible contracting official, the solicitation number, and the contract work description. Although this bid modification form was unsigned, the agency waived this defect as a minor informality and accordingly reduced Reeves's bid to \$2,992,550. Reeves's bid modification had the effect of displacing Tilley's bid in the amount of \$3,003,000 as the apparent low bid.

Tilley protests the Navy's determination to consider Reeves's unsigned bid modification in determining its bid to be low. Tilley argues that the absence of a signature on Reeves's bid modification creates an ambiguity as far as Reeves's intent to perform at the lower bid price. This ambiguity, according to the protester, provided Reeves an unfair opportunity to select between its unmodified and modified bid prices after other bids had been exposed. Since Reeves's bid allegedly suggests two different bid prices, only one of which is low, the protester claims that the agency was required to reject the ambiguous bid and recognize Tilley as the low bidder.

An agency may not accept a bid that is ambiguous as to price unless the bid remains low under the competing interpretations. Omni Elevator Co., B-241678, Feb. 25, 1991, 91-1 CPD ¶ 207; Central Mechanical Constr., Inc., B-220594, Dec. 31, 1985, 85-2 CPD ¶ 730. The mere allegation that a bid is ambiguous does not make it so; an ambiguity only exists where the bid lends itself to two or more reasonable interpretations. Omni Elevator Co., *supra*; Hughes & Hughes/KLH Constr., 68 Comp. Gen. 194 (1989), 89-1 CPD ¶ 61. Where a single rational explanation removes all doubt as to the bidder's intended price, an agency may appropriately accept the bid on the basis of that price. Omni Elevator Co., *supra*.

Here, we think there is no reasonable doubt but that Reeves intended to be bound, and was in fact bound, by its modified bid price, not the bid price stated on the SF-1442. The modification accompanied the signed bid in the same bid envelope and referenced both "the enclosed base bid" and the IFB itself. In addition, the modification appeared on Reeves's corporate letterhead and provided a signature blank for Graham Reeves, the same individual who signed the SF-1442, the bid bond, and the Certificate of Procurement Integrity included in the same bid package. In our view, these circumstances make clear that Reeves intended the

agency to consider the modification as part of its bid and removed any ambiguity as to the intended bid price, notwithstanding that there was no signature on the bid modification form.<sup>1</sup> In this regard, all documents submitted with a bid must be considered part of the bid for purposes of determining the bid's responsiveness or meaning. See General Elec. Co., 65 Comp. Gen. 377 (1986), 86-1 CPD ¶ 223.

Tilley raises the concern that Reeves, after surveying bids at bid opening, could have effectively repudiated its modified price and demanded the higher price on the signed SF-1442, claiming that its failure to sign the modification showed its intent not to be bound by it; this scenario would adversely affect the integrity of the sealed bid system by permitting a bidder to select after bids had been exposed which of two bid prices is more to its advantage. We think the possibility that Reeves did not intend to be bound by the modification letter is too remote to require the rejection of its bid, and that there is no reason to believe that Reeves would not be bound to a modification to its bid that it included as part of its bid package. See generally 4 S. Williston, A Treatise on the Law of Contracts, § 628 (3rd Ed. 1961). In this regard, we note that the modification was on Reeves's stationery, clearly referenced this IFB and described how the bid price was to be modified; there is no evidence that the modification was included in the sealed bid package accidentally or without authorization. Cf. Barnes Elec. Co., Inc., B-228651, Oct. 2, 1987, 87-2 CPD ¶ 331 (unsigned bid modification on the outside of the bid envelope cannot be considered). Thus, the scenario advanced by the protester, whereby Reeves could elect after bid opening


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<sup>1</sup>It is true that unsigned bids or bid modifications generally must be rejected because, absent an appropriate signature, the bidder would not be bound should the government accept the bid. See Tomahawk Constr. Co., B-243582, Aug. 7, 1991, 91-2 CPD ¶ 137; JRW Enters., Inc., B-238236, May 11, 1990, 90-1 CPD ¶ 464. There is an exception to this rule that permitting the agency to waive as a minor informality a bidder's failure to sign its bid or bid modification where, as here, the bid includes other documentation bearing the bidder's signature and identifying the bid itself that evidences the bidder's intent to be bound. Federal Acquisition Regulation § 14.405(c)(1); Jennings Int'l Corp., 68 Comp. Gen. 79 (1988), 88-2 CPD ¶ 472; Micon Corp., B-249231, Oct. 28, 1992, 92-2 CPD ¶ 293. Although Reeves failed to sign the bid modification, which expressly referenced that it was intended to lower Reeves's base bid for this IFB, the awardee's bid also included a signed SF-1442 and a signed bid bond, each of which identified the IFB.

whether or not to honor its lower bid price, is not a reasonable possibility in the present circumstances.

In view of the foregoing, the agency properly waived Reeves's failure to sign its bid modification as a minor informality, inasmuch as Reeves is bound to the price on the modification included in the bid package. See Omni Elevator Co., supra (bidder's failure to initial changes to its bid prices is waivable as a minor informality, where the bid, when read as a whole, makes clear that the bidder intended to be bound by its modified bid prices).

The protest is denied.

  
for James F. Hinchman  
General Counsel